

VICTIMS' RIGHTS -- Victim is not the "client" of the prosecution
Revised 4/2000

It is clear that the State does not "represent" the victim as a client. In *State ex rel. Romley v. Superior Court [Wilkinson]*, 181 Ariz. 378, 891 P.2d 246 (App. 1995), the defendants moved to disqualify the Maricopa County Attorney's Office from prosecuting the case because the Maricopa County Attorney's Office had previously prosecuted the victim on other, unrelated charges. The defendant argued that under the Victims' Bill of Rights, the duty of a prosecutor was increased so much that the victim was made a quasi-client of the prosecution, making it necessary for the prosecution to withdraw under E.R. 1.9, Rules of Professional Conduct, Rule 42, Rules of the Arizona Supreme Court.⁽¹⁾ The Court of Appeals recognized that the Victims' Bill of Rights imposed additional statutory duties on the prosecution, but stated, "the rule is well established that a prosecutor does not 'represent' the victim in a criminal trial; therefore, the victim is not a 'client' of the prosecutor." *Id.* at 382, 891 P.2d at 250. The Court reasoned that a defense attorney's responsibility is primarily towards the defendant, but the prosecutor's duty is to the State, representing society as a whole. The prosecutor's "duty is to see that justice is done on behalf of both the victim and the defendants:

The prosecutor . . . enters a courtroom to speak for the People and not just some of the People. The prosecutor speaks not solely for the victim, or the police, or those who support them, but for all the People. That body of "The People" includes the defendant and his family and those who care about him. It also includes the vast majority of citizens who know nothing about a particular case, but who give over to the prosecutor the authority to seek a just result in their name.

State ex rel. Romley v. Superior Court [Wilkinson], 181 Ariz. 378, 891 P.2d 246, 250 (App. 1995), *quoting Lindsey v. State*, 725 P.2d 649, 660 (Wyo. 1986) [Urbigkeit, J., dissenting], *quoting* Commentary, *On Prosecutorial Ethics*, 13 Hastings Const. L.Q.

537-539 (1986). The Court also found no "appearance of impropriety" in the Maricopa County Attorney's Office's prosecuting the defendants.

1. That rule provides in part:

ER 1.9. Conflict of Interest: Former Client

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation